STATE OF MICHIGAN

COURT OF APPEALS

JOSEPH CUTLER MARGOL and MARY MARGOL, Plaintiffs-Appellants, V ANTHONY MARGOL, JR., Defendant-Appellee.	UNPUBLISHED July 22, 2003 No. 236730 Berrien Circuit Court LC No. 2000-003879-CH

Before: Schuette, P.J., and Sawyer and Wilder, JJ.

PER CURIAM.

In this action plaintiffs appeal as of right from the circuit court's order denying equitable relief. We affirm.

Plaintiffs and defendant[1] were conveyed property by warranty deed on April 23, 1987. Thereafter, plaintiffs and defendant agreed to an equitable division of the property, and executed quit claim deeds to convey one half of the property to each other. These deeds were duly recorded contemporaneously with their execution and contained no restrictions. The parties also executed an agreement that purports to limit the number of occupied dwellings to be built on each parcel of land to one. The agreement states, in pertinent part:

> WHEREAS, Joe and Mary, and Tony and Marilyn desire to establish and preserve certain rights among themselves with respect to the property . . . .
>
> * * *
>
> 3. Only one structure on each parcel shall be occupied as a dwelling at any one time.

[1] At the time of the conveyance, defendant was married and his wife also received an interest in the property. Subsequently, defendant and his wife were divorced. It appears that defendant obtained his ex-wife's interest in the property as part of the divorce settlement, and defendant's ex-wife is not a party to this action.

Unlike the quit claim deeds, the agreement between the parties was not recorded at the time of execution[2].

In conjunction with his divorce, defendant prepared to sell the marital home and a portion of the property that had been jointly conveyed to he and his ex-wife, and to build a new home on the southwest corner of the portion of the property he retained. Defendant discussed this plan with plaintiffs and received their verbal agreement. Plaintiffs expressed the desire, however, to modify the agreement. Defendant sold the marital home and parcel of land as planned. The warranty deed executed and provided to the successors in interest contained no restrictions. Defendant also began construction on his new home, with assistance from plaintiffs. While defendant was building his new home, negotiations ensued on a new agreement but no consensus was reached. Plaintiffs filed this action seeking to enforce the occupied dwelling limitation stated in the agreement.

Following a bench trial, the trial court held that plaintiffs were equitably estopped from enforcing the provision so as to interrupt and prevent defendant from constructing a new dwelling in the southwest corner of the property, but ordered the removal of a berm that had been constructed by defendant. Plaintiffs do not directly challenge this finding of the trial court, and therefore this issue is not preserved. The trial court also held that the agreement at issue was personal in nature, and therefore did not run with the land to bind the successors in interest. On appeal, plaintiffs contend that the agreement constituted a reciprocal negative easement running with the land, and they seek a ruling from this Court that the trial court erred by holding that the successors in interest are not bound by the agreement. Plaintiffs do not challenge the trial court's ruling that they are equitably estopped from enforcing the agreement to prevent defendant's construction of the dwelling in the southwest corner of his property.

This Court reviews de novo a trial court's determination as to whether to grant equitable relief. *Walker v Farmers Ins Exchange*, 226 Mich App 75, 79; 572 NW2d 17 (1997). We review the trial court's findings of fact for clear error. *Triple E Produce Corp v. Mastronardi Produce, Ltd*, 209 Mich.App 165, 171; 530 NW2d 772 (1995). A finding of fact is clearly erroneous when, although there is evidence to support it, we are left with a definite and firm conviction that a mistake was made. *Id.*

We find no error in the trial court's conclusion that the agreement did not create reciprocal negative easements that ran with the land to bind the successors in interest. Where an owner of land has burdened it with reciprocal negative easements, the parcels remain burdened with the easements, and the right to demand observance of the easements passes to each purchaser with *notice* of the easements. *Webb v Smith*, 224 Mich App 203, 571; 568 NW2d 378 (1997). The essential elements for proof of a reciprocal negative easement are: (1) a common grantor; (2) a general plan; and (3) restrictive covenants running with the land in accordance with the plan and within the plan area in deeds granted by the common grantor. *Cook v Bandeen*, 356 Mich 328, 337; 96 NW2d 743 (1959). As a general rule, restrictions such as those contained in reciprocal easements are construed strictly against those seeking their enforcement, and any

[2] The agreement was subsequently recorded by plaintiffs in June 1999, after each party had retained legal counsel.

doubts are resolved against restricting the use of real property. *Moore v Kimball*, 291 Mich 455, 461; 289 NW 213 (1939). Restrictions cannot be enlarged by construction to encompass that which was not expressed by the parties. *Moore, supra* at 462.

In *Greenspan v Rehberg*, 56 Mich App 310, 321; 224 NW2d 67 (1974), this Court held that for a covenant to run with the land, the grantor and grantee must have intended that the covenant run with the land. The intention of the parties is to be deduced from the language employed by them. *Moore, supra* at 461. The question is not what intention existed in the minds of the parties, but what intention was expressed in the language used. *Id.*

The language of the agreement at issue was not typical of language employed to run with the land with the intent to bind successors in interest. Specifically, the parties' rather informal use of their first names in the agreement, and the expression in the agreement that the parties "desire[d] to establish and preserve certain rights *among themselves* with respect to the property," (emphasis added) is an expression of the intent that the agreement was personal rather than running perpetually with the land.

In addition, because the agreement was not recorded when it was executed by the parties, the evidence preponderates that there was no intention to provide notice of any restrictions attaching to the land to potential successors in interest. Furthermore, there were no restrictions in the quitclaim deeds that were recorded contemporaneous with the execution of the then unrecorded agreement.[3] Therefore, the trial court did not clearly err in finding that the agreement expressed no intent that the covenant was to run with the land.

Affirmed.

/s/ Bill Schuette
/s/ David H. Sawyer
/s/ Kurtis T. Wilder

[3] The fact that the agreement was subsequently recorded by plaintiffs on June 7, 1999 after the parties had retained legal counsel regarding this dispute and some 12 years after the agreement was executed, does not change our analysis.